

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

913Q0044

SENATE HEALTH AND HUMAN SERVICES ENGROSSED NO. **SB 130** - 2/4/2009

Introduced by: Senators Gillespie and Miles and Representatives Deadrick and Dennert

1 FOR AN ACT ENTITLED, An Act to require written consent for the issuance of certain
2 disinterment permits.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-25-38.1 be amended to read as follows:

5 34-25-38.1. A disinterment permit shall be issued by the department upon receipt of a
6 written or electronic application from a person licensed by the State Board of Funeral Service
7 or upon receipt of an order of a court of competent jurisdiction directing the disinterment. If the
8 disinterment is not directed pursuant to a court order, the department may not issue a
9 disinterment permit without the written consent of the surviving spouse, or in the case of a
10 spouse's absence, death, or incapacity, the next of kin within the same degree of kinship. In the
11 case of a minor, if the disinterment is not directed pursuant to a court order, the department may
12 not issue a disinterment permit for the minor without the written consent of the surviving
13 parents. The Department of Health may promulgate rules pursuant to chapter 1-26 to establish
14 the process for issuing a disinterment permit that is not directed pursuant to a court order. The
15 disinterment permit becomes effective as provided in this section. Unless the disinterment



1 permit was issued as the result of a court order, the department shall, upon issuance of the
2 disinterment permit, notify the affected cemetery board of directors appointed pursuant to § 7-
3 26-7 or 9-12-18 or the board of county commissioners of the county in which the disinterment
4 is to occur on the issuance of the permit. The cemetery board of directors or the board of county
5 commissioners may request the circuit court to prevent the disinterment. The disinterment
6 permit shall take effect within fifteen days after its issuance unless the circuit court has ordered
7 otherwise. The disinterment permit authorizes disinterment, transportation, and reinterment of
8 a dead body or fetus. Authorities in charge of a cemetery may not transfer bodies buried in one
9 part of the cemetery to another part without the authority of a disinterment permit.